



February 4, 2019

TO: Republican Members

FROM: Republican Committee Staff

RE: Hearing entitled “Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions”

I. INTRODUCTION

The Subcommittee on Health will hold a hearing on Wednesday, February 6, 2019, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions.”

II. REPUBLICAN WITNESSES

- Avik S. A. Roy, President, The Foundation for Research on Equal Opportunity (FREOPP.org); and,
- Thomas P. Miller, Resident Fellow, American Enterprise Institute (AEI).

III. BACKGROUND

In 2018, twenty state Republican attorneys general filed a lawsuit regarding the Patient Protection and Affordable Care Act (PPACA), commonly known as Obamacare, arguing that the law’s individual mandate is unconstitutional, and therefore, the entire law is unconstitutional. The states based their arguments on the Supreme Court’s 2012 ruling in *NFIB v. Sebelius* that the individual mandate is unconstitutional under the Constitution’s commerce clause, but is constitutional under Congress’s taxation authority.

In 2017, Congress passed a sweeping tax overhaul, which included the elimination of Obamacare’s individual mandate penalty, but did not repeal the individual mandate itself. The states argued that a tax without a dollar amount associated with it is no longer a tax, because no revenue is raised, thus rendering the mandate unconstitutional. The states further argued that if the individual mandate is unconstitutional, then the entire law should be also, as the states argued the individual mandate is not severable from the rest of the law. It is worth noting that the states involved in the lawsuit had requested that if the judge ruled in their favor, the decision should only apply to their states and not every state.

During the lawsuit, the U.S. Department of Justice (DOJ) filed a brief agreeing with the plaintiffs that the individual mandate is now unconstitutional. However, the Justice Department lawyers did not go quite as far as the state attorneys general, arguing that the individual mandate is severable from most of the law, except for certain provisions related to the sale and pricing of

health insurance coverage. This is consistent with the Obama Justice Department's position in *NFIB v. Sebelius*. DOJ also requested that the judge convert the states' request for a preliminary injunction into a motion for summary judgement, which is what the judge ultimately did.

On December 14, 2018, a federal judge in Texas agreed with the states and granted [summary judgement](#) stating that "the Individual Mandate 'is essential to' and inseverable from 'the other provisions' of the ACA." Therefore, the judge ruled that the entire Obamacare law is unconstitutional.

Speaker Nancy Pelosi's [Democratic Rules Package](#) included two provisions authorizing the House general counsel to intervene in *Texas, et al vs. United States*. This paved the way for Speaker Pelosi to take unilateral legal action on behalf of the entire House of Representatives in the ongoing court case surrounding the Constitutionality of Obamacare, and any future court cases on the law.

During floor consideration, House Republicans offered a motion directing the House to produce legislation that would lock in protections for pre-existing conditions. Specifically, the legislation:

- "guarantees no American citizen can be denied health insurance coverage as the result of a previous illness or health status; and
- guarantees no American citizen can be charged higher premiums or cost sharing as the result of a previous illness or health status, thus ensuring affordable health coverage for those with pre-existing conditions."

House Democrats blocked this effort and gave Speaker Pelosi the authority to intervene in the lawsuit. The Speaker quickly filed three motions with the court to intervene in the case. House Democrats then voted a second time to provide this identical authority to the Speaker, leading House Republicans to question whether the Democrats want to grandstand or govern.

The judge's decision did not immediately end Obamacare and will not affect insurance coverage or premiums for 2019. The judge also ordered a stay of his earlier ruling and it is currently being appealed and could be reversed by higher courts. The Trump administration has stated, "HHS will continue administering and enforcing all aspects of the ACA as it had before the court issued its decision." Several legal steps remain before the courts reach a final conclusion.

IV. ISSUES

The following issues may be examined at the hearing:

- Will House Democrats join House Republicans to guarantee pre-existing condition protections for all Americans and do so in a manner that can withstand judicial scrutiny?
- Will House Democrats join House Republicans in repealing the underlying individual mandate?

- Will House Democrats reinstate a nationwide tax on all Americans who choose not to purchase government-mandated health coverage?

V. REPUBLICAN STAFF CONTACTS

If you have any questions regarding this hearing, please contact Adam Buckalew or Caleb Graff of the Republican Committee staff at (202) 225-3461.